proceeding.[419] As the other parties who discussed this issue demonstrated through their comments, the Notice gave fair and adequate notice that the Commission would be considering all issues associated with possible changes in the rate of return levels in the backstop.

227. SWB contends that any change to the sharing mechanism or productivity factor based on the relative earnings and effective rates of return of the price cap LECs would amount to a represcription and that any represcription would require that parties be notified to submit the types of evidence listed in Part 65 of the Commission's Rules.[420] This argument is also without merit. It is true that the backstop was adopted as rules pursuant to Sections 201 through 203 of the Communications Act and as a prescription pursuant to Sections 205(a) and 4(i), but it was not made subject to the rate of return prescription process in the Part 65 Rules. Section 65.1 of the Rules expressly excludes price cap LECs from the Part 65 Rules, with the exception of reporting requirements[421] and refund obligations for periods before a LEC was subject to price caps.[422] Section 65.701(d) ends the Part 65 rate of return prescription and refund liability for price cap LECs on December 31, 1990.[423] We also clearly indicated in 1990 when LEC price caps was adopted and in the Notice that we would consider all relevant evidence in deciding whether to revise all aspects of the plan, including the backstop.[424] Interested parties and the public should thus have

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[419] See Notice, 9 FCC Rcd at 1697 ("If the sharing and low-end adjustment mechanisms are retained, we also must consider whether to revise the rate of return thresholds triggering their application.")

[420] SWB Reply at 24.

[421] Section 65.600(c) of the Commission's Rules, 47 C.F.R. § 65.600(c).

[422] Section 65.703(g) of the Commission's Rules, 47 C.F.R. § 65.703(g); se also Amendment of Part 65 and 69 of the Commission's Rules to Reform the Interstate Rate of Return Represcription and Enforcement Processes, CC Docket No 92-133, 7 FCC Rcd 4688 (1992).

[423] Section 65.701(d) of the Commission's Rules, 47 C.F.R. § 65.701(d).

[424] LEC Price Cap Order, 5 FCC Rcd at 6835:

> We have not established, and do not intend to establish at this time, any specific standards or remedies, or even any specific instructions [for the performance

long been aware that we would consider revising the backstop rules and prescription in this proceeding, based upon any relevant evidence. They were also given express notice of this in the Notice that initiated this docket and full opportunity to submit evidence, analysis, and comment. We conclude that SWB and other commenters raise no valid substantive or procedural reasons why we should not adopt the interim changes in the LEC price cap backstop mechanisms discussed in this Report and Order.

228. Our decision to set the rate of return thresholds in the backstop to provide incentives for LECs to select appropriate X-Factors represents a modification of our original proposal to lower these thresholds. We find, however, that it is necessary to the proper operation of the LEC price cap plan pending the completion of the further rulemaking.

229. In the Notice, we observed that interest rates had fallen substantially since the LEC price cap plan was adopted and the rate of return thresholds in the backstop were set. We believed that this decline in the interest rate component of the cost of capital was strong evidence that capital costs as a whole had fallen.

230. Several parties in the original comment cycle, in May and June 1994 similarly supported lowering the thresholds, contending that as interest rates fell from 1991 through 1993, LEC capital costs declined sharply. AT&T estimated LEC capital costs under price caps averaged 9.93 percent;[425] MCI claimed that a contemporary cost of capital was 9.54 percent.[426] LECs objected to these proposals and calculations, arguing that LEC

> review]. We intend to use all available data and information in our performance reviews . . .
>
> The results of the performance review will enable us to revisit, with experience some of the issues raised here, but, contrary to the assertions of some commenters, its effectiveness does not depend on the existence of specific standards and remedies. The performance review should provide sufficient information to allow the Commission to reevaluate the need for low-end adjustment and sharing mechanisms, and to adjust the sharing mechanisms and productivity factor if necessary. At that time we will evaluate all aspects of the price cap plan and of LEC performance.

See also Notice, 9 FCC Rcd at 1704 (Baseline Issue 11).

[425] AT&T Comments and Appendix D.

[426] MCI Comments and Appendix A.

capital costs are higher now than in 1990 as a result of the higher risks of competition they face, that their earnings are reasonable in relation to those of other companies (including IXCs such as AT&T and MCI) and the earnings thresholds set by the Commission, and that the AT&T and MCI cost of capital calculations are flawed.[427]

231. In the Notice we cited decreases in interest rates as a possible reason for a one-time adjustment in price cap rates. After the Notice was adopted, however, interest rates increased significantly. For example, in January, 1991, the average yield on 10-year treasury notes was 8.09 percent. In January, 1994, 10-year treasury notes had an average yield of 5.75 percent.[428] On January 31, 1995, however, the yield on 10-year treasury notes was 7.62 percent.[429] Although carriers received an unanticipated benefit during part of the four year period under review, we have no basis upon which to conclude that interest rates will be similarly low in the future. There no longer appears to be strong cause for reducing access rates in the 1995-96 rate period to account for changes in interest rates.

232. We have recently reached a similar conclusion with respect to represcription of the allowed rate of return for LECs subject to rate of return regulation.[430] In the ROR Reform Order we replaced our rule requiring represcription of the rate of return every two years with a semi-automatic "trigger mechanism" for determining when the cost of capital may have changed sufficiently to consider beginning a rate of return proceeding. This mechanism operates by comparing current yields on ten-year treasury securities with yields at the time of the last represcription. If current yields remain 150 basis points (1.5 percent) above or below the reference level for six consecutive months, the Common Carrier Bureau will issue a notice inviting comment on whether the Commission should begin a represcription proceeding. At present, represcription of the rate of return is not indicated.[431]

233. Under the current price cap rules, the price cap sharing zones are not affected by represcription of the

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427 See, e.g., USTA Reply at 9-15 and Attachment 2.

428 We obtained these bond interest rates from a computer on-line service provided by the Federal Reserve Bank of St. Louis.

429 New York Times, Jan. 31, 1995, at D19, col. 1.

430 See ROR Reform Order.

431 Id.

authorized rate of return for LECs subject to rate-of-return regulation. Questions have been raised in this proceeding concerning the extent to which changes in the LECs' cost of capital are reflected in the GDP-PI. In the Further Notice, we will seek comment on how to incorporate changes in the cost of capital into the price cap formula.

234. Finally, we decline to adopt any special rules governing fourth quarter accounting adjustments, as MCI recommends. We have been monitoring fourth quarter accounting adjustments for several years now, and we have found no evidence that those adjustments are improper, or intended only to manipulate sharing obligations. Furthermore, we disagree that establishing a deadline of September 15 for fourth quarter accounting adjustments would make those adjustments more or less reasonable, or more or less likely to comply with our rules.

E. One-time Rate Changes

1. Background

235. In the Notice the Commission sought comment on whether it should require a one-time downward adjustment to the LEC price cap indexes. We pointed to increased LEC earnings and lower interest rates as possible justifications for such a rate reduction. At the same time, we stated that it was crucial to avoid undermining the profitability incentive that price caps seeks to create. We asked parties to explain how their proposals would preserve or improve price caps incentives and assure just and reasonable rates.[432]

2. Comments

a. Adjustment Based on Changes in Capital Costs or Interest rates

236. MCI, AT&T, GSA, and CCTA support a one-time reduction in the LECs' price cap indexes based on a decline in the cost of capital.[433] MCI also advocates recalibrating the sharing mechanism and adjusting the price cap index to reflect the lower cost of capital.[434] MCI suggests that, at each subsequent price cap review, the Commission should establish the current cost of

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[432] Notice, 9 FCC Rcd at 1695-96.

[433] MCI Comments at 26-27; AT&T Comments at 30-33; CCTA Reply at 10-17; GSA Reply at 5-14.

[434] MCI Comments at 27.

capital and reset the sharing mid-point and boundaries accordingly.[435] On the other hand, ICA contends that either the price cap index or the sharing mechanism should be indexed for changes in interest rates.[436]

237. According to AT&T and GSA, the LECs' cost of capital has decreased greatly since we adopted LEC price cap regulation, and that only half this decrease was reflected in the GNP-PI.[437] AT&T recommends requiring the LECs to reduce their current PCIs by a total of $322 million.[438] AT&T submitted a cost of capital analysis in which it concludes that, over the period 1991-1993, the LECs' cost of capital averaged 9.93 percent.[439] MCI submitted the testimony of Matthew I. Kahal, purporting to show that, since 1990, the overall cost of capital for LECs has fallen from 11.25 percent to 9.54 percent.[440] GSA suggests that the Commission should commence a rate of return represcription proceeding, and should reduce the LECs' PCIs to reflect that revised rate of return.[441] CCTA notes that the California Public Utilities Commission recently reset Pacific Bell's intrastate rate of return at 10.00 percent, based on reductions in the cost of capital since 1989. Because of this, CCTA argues that we should prescribe a 10 percent interstate rate of return, and reduce the LECs' PCIs accordingly.[442]

238. USTA and the LECs, as well as Sprint and CSE, oppose

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[435] MCI Comments at 23-27. MCI favors adjusting the price cap formula in future performance reviews, rather than adjusting the PCI, to reflect changes in the cost of capital. MCI argues that most LEC debt is long-term, fixed-rate debt, and that short-term interest rates have little effect on total debt costs. Therefore, according to MCI, it is not necessary to adjust the PCI annually to reflect interest rate changes. MCI Comments at 27 n.47.

[436] ICA Comments at 13.

[437] AT&T Comments at 30-33; GSA Reply at 8.

[438] AT&T Comments at 30-33.

[439] AT&T Comments, Appendix D.

[440] MCI Comments, Appendix A, Statement of Matthew I. Kahal Concerning: Cost of Capital (dated May 1994).

[441] GSA Reply at 5-7, 10-14.

[442] CCTA Reply at 10-17. CCTA also maintains that the sharing and lower end adjustments should be based on a 10.00 percent rate of return. Id. at 10-11.

any one-time adjustment to price cap rates to reflect changes in interest rates or the cost of capital.[443] These commenters contend that a one-time downward adjustment would constitute a recapture of past productivity gains, thereby diminishing the LECs' incentives to innovate and invest.[444] BellSouth and CSE argue that adjusting the price cap index to reflect lower interest costs could undermine the LECs' incentives to make prudent decisions regarding the timing of investments and the term structure of debt.[445] Some of these commenters assert that any such adjustments would be inappropriate because price cap regulation is intended to separate prices from rate of return.[446] They also argue that interest rate changes are already reflected in the GNP-PI.[447] Ameritech maintains that, like tax rate changes, interest rate changes are a normal risk of doing business and, therefore, should be considered endogenous.[448] Similarly, BellSouth argues that, regardless of whether LEC capital cost changes are reflected completely in the GNP-PI, adjusting the PCI for changes in the cost of capital without making such adjustments for changes in the cost of labor might create a disincentive against using the optimum mix of labor and capital.[449] Ameritech interprets AT&T's argument that LEC capital cost changes were not completely reflected in the GNP-PI as an attempt to replace GNP-PI retroactively with an industry-specific inflation measure. Ameritech asserts that the

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443 USTA Comments at 79; NYNEX Comments at 36; Lincoln Comments at 10; RTC Comments at 20 n.36; Bell Atlantic Comments at 13; GTE Comments at 74; Pac Bell Comments at 34; US West Comments at 17; SWB Comments at 41; CSE Comments at 4; SNET Comments at 13-14; Ameritech Comments at 12; Lincoln Reply at 4; BellSouth Reply at 20-21; Sprint Reply at 15 (the cost of capital has not shown any persistent change and that no adjustment for changes in capital costs is appropriate).

444 USTA Comments at 80; SWB Comments at 38-39; Ameritech Comments at 12-13; US West Comments at 36-37.

445 BellSouth Reply at 17-18; CSE Comments at 4-5.

446 BellSouth Comments at 38; US West Comments at 17; RTC Comments at 20 n.36; SWB Reply at 30.

447 Ameritech Comments at 13; BellSouth Comments at 38; Bell Atlantic Comments at 13; Pac Bell Comments at 34; US West Comments at 17; Lincoln Comments at 10.

448 Ameritech Comments at 13.

449 BellSouth Reply at 14-17.

Commission has rejected similar proposals in the past.[450]

239. USTA and some LECs assert that MCI and AT&T's cost-of-capital calculations fail to justify their recommendations for a one-time rate adjustment.[451] According to USTA, MCI errs in concluding that competition has had no impact on the LECs' cost of equity and overall cost of capital.[452] USTA claims that the following aspects of MCI's expert testimony produce a downwardly-biased result: use of the RBHCs as a risk proxy for the BOCs;[453] use of the RBHCs' (as opposed to the BOCs') capital structure;[454] failure to account for equity flotation costs; and use of the "annual form" of the discounted cash flow (DCF) model when the RBHCs and most other firms issue quarterly dividends.[455] USTA argues that AT&T's analysis of historical evidence on the LECs' cost of capital from 1991 to 1993 is irrelevant to an assessment of the LECs' current cost of capital. USTA also contends that AT&T's historical estimates are flawed by generally the same errors that USTA perceives in MCI's analysis.[456]

240. In a December 21, 1994, ex parte, statement, MCI submitted data on LEC Earnings Before Interest, Taxes, Depreciation, and Amortization (EBITDA). According to MCI, the RBOCs' EBITDA margin is 46 percent, compared with an IXC average of 19.0 percent, and a national average of 13.9 percent.[457] According to SWB, MCI has shown only that the LEC industry is more capital intensive than other industries, not that LEC earnings have been unreasonable.[458]

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[450] Ameritech Reply at 6-7, citing AT&T Price Cap Order, 4 FCC Rcd at 2794; LEC Price Cap Order, 5 FCC Rcd at 6793.

[451] USTA Reply at 12; GTE Reply at 10-14; BellSouth Reply at 18-20; NYNEX Reply at 40-43; Ameritech Reply at 6.

[452] USTA Reply at 13.

[453] USTA Reply at 14; accord GTE Reply at 11-12.

[454] USTA Reply at 14.

[455] USTA Reply at 14; accord GTE Reply at 11-12.

[456] USTA Reply at 13-15.

[457] Letter from Donald F. Evans, MCI, to Acting Secretary, December 21, 1994.

[458] SWB January 18 Comments at 19 and Attachment 1. SWB also repeats its earlier argument that return on equity studies should not be based on aggregated Bell Regional Holding Company data. SWB January 18 Comments at 20-21.

241. US West and SWB assert that a one-time reduction based on relative earnings and effective rates of return of the price cap LECs would require a rate prescription proceeding under Section 205 of the Communications Act.[459] USTA and SWB argue that the Notice did not provide notice of a represcription proceeding and, therefore, the Commission is legally precluded from prescribing a new LEC rate of return in this proceeding.[460]

b. Adjustment Based on Reassessment of the Productivity Factor

242. As discussed in Section IV.B., above, MCI contends that the 1984 data point in the Frentrup-Uretsky Study was in error, and that the X-Factor should have been 5.9 percent rather than 3.3 percent.[461] Based on this contention, MCI advocates reducing the PCI by the difference between 5.9 percent and 3.3. percent for each of three annual price cap filings, or at least 7.5 percent.[462] ICA recommends a one-time three percent PCI reduction. ICA bases this figure on the difference between the current 2.8 percent productivity factor and the midpoint of various LEC-sponsored TFP calculations since 1984 and the calculations submitted by major ratepayers, which, according to ICA, is 5.8 percent.[463] ICA suggests that the one-time adjustment could be applied either pro rata to each of the LEC's services or specifically to common line and residual transport interconnection rate elements.[464] Sprint would target these rate reductions first to high and medium zone density transport rates, and then if the LEC chooses, to common line rates.[465]

243. As discussed in more detail above, USTA and some LECs oppose removing the 1984 data point from the Frentrup-Uretsky

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459 US West Reply at 21; SWB Reply at 24.

460 USTA Reply at 12; SWB Reply at 24; see also NYNEX Reply at 39 (the Commission cannot change rate-of-return prescriptions retrospectively).

461 Section IV.B.2.d, supra.

462 MCI Comments at 25-27.

463 ICA Comments at 12; ICA Reply at 2.

464 ICA Comments at 12-13; ICA Reply at 1-3.

465 Sprint Reply at 4-8.

Study.[466] USTA opposes MCI's recommendation for a 7.5 percent PCI reduction, because it disagrees with MCI regarding the 1984 data point, and because it contends a rate reduction would constitute productivity recapture.[467] US West contends that MCI's proposed one-time productivity adjustment would constitute retroactive ratemaking.[468]

c. Adjustment as a Quid Pro Quo for Other Changes in the Price Cap Plan

244. Sprint suggests that a permanent 2 percent price cap revenue reduction could be justified as a quid pro quo for eliminating the sharing mechanism from the LEC price cap plan.[469] Similarly, USTA included a 1 percent "up front" rate reduction as part of its ex parte proposal for a new price cap option in which a moving average productivity offset would replace the sharing and low-end adjustment mechanisms.[470]

3. Analysis

245. In section IV.B., above, we find that the productivity factor in our current price cap formula was set lower than we intended due to the inclusion of 1984-85 data in the Frentrup-Uretsky short-term productivity study. We now find that a one-time reduction in price cap rates is necessary to ensure that this error does not, in the future, lead to unreasonably high rates and that it does not continue the current balance between ratepayer and shareholder interests, which is less favorable to consumers than we intended. We reject all other proposals for one-time reductions based on changes in interest rates, on changes in the overall cost of capital, or based solely on the observation that LECs have experienced high earnings under price caps.

246. A one-time reduction in LEC PCIs is required to correct, on a prospective basis, the effects of our underestimation of LEC productivity. Correct specification of the productivity factor was a critical element in the balance we struck between ratepayer and LEC shareholder interests when we

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[466] USTA Reply at 58-59; US West Reply at 25; Pac Bell Reply at 22-23; Bell Atlantic Reply at 14-16; GTE Reply at 26; Lincoln Reply at 6-7; SWB Reply at 41, cited in Section IV.B.2.d, supra.

[467] USTA Reply at 59.

[468] US West Reply at 25.

[469] Sprint Reply at i-ii, 4-5.

[470] January 18 Letter at 3-4.

instituted price cap regulation.[471] LECs were supposed to become more efficient if they wished to exceed the earnings they would have been permitted under rate of return regulation. Ratepayers were to benefit from rates reduced to the level that would provide this challenge. If, as we now conclude, the productivity factor we selected was lower than the actual difference between LEC productivity and that of the economy as a whole, then the price cap formula was less favorable to ratepayers, and more favorable to shareholders, than we intended. Some portion of the LECs' increased earnings were obtained without any productivity improvements, and rates were not as low as we intended.

247. The sharing mechanism, to this point, has operated as intended, to ameliorate, but not eliminate, the effects of our selection of a low productivity offset. By this time, however, LEC PCIs are at a level that will allow future rates to be significantly higher than they would have been had we made a more accurate estimate of LEC productivity. Specifically, and as explained below, PCIs are now as much as 2.8 percent higher than they would have been had we excluded the 1984 data point from the Frentrup-Uretsky study. We find that this difference between the rate levels we intended to produce and the rate levels that actually exist will, if perpetuated, unreasonably shift the balance of ratepayer and shareholder interests in favor of LEC shareholders. We therefore direct LECs to make a one-time reduction in their PCIs. This reduction shall be made in the 1995 annual access tariff filing so that it will be reflected in interstate access rates that take effect August 1, 1995.[472]

248. Specifically, for each year that a LEC elected an X-Factor of 3.3 percentage points, we conclude that the X-Factor for that LEC was 0.7 percent too low. Therefore, we require LECs to multiply their current PCIs for the common line basket, traffic sensitive basket, and trunking basket by a factor equal to the following equation:

$$1 - (0.007n)$$

where n is the number of years the LEC elected to use an X-Factor of 3.3 percent. We find this reinitialization is necessary for the trunking basket as well, even though this basket has existed only for about one year. Prior to the transport restructure, the services in the trunking basket were either in the special access

[471] <u>LEC Price Cap Order</u>, 5 FCC Rcd at 6796.

[472] The Common Carrier Bureau recently rescheduled the effective date for the price cap LECs' 1995 annual access filings from July 1, 1995 to August 1, 1995. 1995 Annual Access Tariffs, United States Telephone Association, Application for Waiver, DA 95-494 (Com. Car. Bur., released Mar. 16, 1995).

basket or the traffic sensitive basket. The rates for those services were higher than we should have expected them to be both before and after the transport restructure. Therefore, it is necessary for LECs to make the same adjustment to the trunking basket as they do to their common line and traffic sensitive baskets. Price cap LECs are hereby required to make this adjustment in their 1995 annual access filings.

249. In the case of the interexchange basket, we conclude that no adjustment is warranted. We originally set the interexchange basket X-Factor at 3.0 percent, equal to AT&T's X-Factor. This was because LECs provide the services in that basket in competition with AT&T's interexchange services.[473] Because we did not rely on the Frentrup-Uretsky study in setting the interexchange X-Factor, no adjustment to that basket is warranted now.

250. We realize that this formula only approximates what the carriers' PCIs would be if we had established an X-Factor of 4.0 percent in 1990. We believe that this will represent a very close approximation in most if not all cases. Nevertheless, there may be some LECs which can make a reasonable showing that the simple adjustment described above significantly overstates the effect of the 3.3 percent rather than the 4.0 percent X-Factor in their cases. We do not wish to foreclose any carrier which can make such a showing from doing so.

251. Therefore, any LEC maintaining that the simple PCI adjustment described above overstates the one-time adjustment appropriate for it may file a waiver petition concurrently with its annual access filings showing the basis for its assertion. Specifically, any LEC seeking a waiver must determine what its current PCIs would be if it had used an X-Factor of 4.0 percent rather than 3.3 percent each time it used 3.3 percent since 1990. We will consider the waiver request of any LEC showing that the resulting adjustment factor differs from the simple formula adjustment described above by more than one tenth of one percentage point. LECs are required to use actual growth figures to develop the PCI for the common line basket, and to make the same exogenous cost adjustments that they made in their original PCI calculations. LECs will also be required to show the effects of the transport restructure, and any midyear PCI adjustments.

252. We disagree with USTA and others who characterize a one-time adjustment to the rates of price cap LECs as a recapture of productivity gains. First, there is no element of a refund in this adjustment. We are calculating the adjustment solely on the basis of our reassessment of where the LECs' PCIs would now be if we had not underestimated the productivity factor, and we are

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[473] LEC Price Cap Order, 5 FCC Rcd at 6811.

applying it prospectively only. The adjustment will not return to ratepayers any portion of the amounts by which their past rates would have been lower had we been using the higher productivity offset all along. Second, the increment of past LEC earnings that was attributable to our understatement of the productivity offset did not represent true productivity gains at all. The one-time adjustment merely ensures that, in the future, higher earnings must be attained through actual improvements in productivity and will not continue to accrue as a result of administrative error.

253. We reject US West's contention that a one-time productivity adjustment constitutes retroactive ratemaking. The rule against retroactive ratemaking bars the Commission from allowing a carrier to raise rates to recoup past underrecovery, or from forcing a carrier to reduce rates to make up for past overrecovery.[474] Indeed, we do not hold here that price cap LECs "overrecovered" from ratepayers during the past four years of price caps. However, the rule against retroactive ratemaking does not preclude the Commission from looking back, as we have done here, at the results of past applications of our rate formulas in order to determine whether those formulas will continue to produce reasonable rates in the future. As explained above, the adjustment we are requiring will not return to ratepayers any amounts charged to them in previous years. We are allowing LECs to keep all of the earnings they were allowed under the original price cap formula. We are not, therefore, engaging in retroactive ratemaking.

254. We emphasize that we have not found that LEC rates that were set in the past in accordance with the price cap rate formula were unreasonably high. Rather, they were not as low as we intended them to be because of our less-than-accurate estimate of LEC productivity. The price cap rate formula, including the 3.3 percent productivity offset, was adopted as a rule by this Commission, and carriers were entitled to rely upon it. Furthermore, the effects of our underestimation of productivity were moderated by a sharing mechanism that we prescribed pursuant to Section 205 of the Communications Act specifically to protect against such an eventuality as this.[475] We determined in the LEC Price Cap Order that the 100 percent sharing requirement, in conjunction with the price cap ceiling, would ensure that LEC rates would remain within a zone of reasonableness.[476] There is no evidence in this record to suggest that rates under price caps

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[474] See, e.g., Nader v. FCC, 520 F.2d 182, 202 (D.C. Cir. 1975).

[475] LEC Price Cap Order, 5 FCC Rcd at 6802.

[476] LEC Price Cap Order, 5 FCC Rcd at 6836.

have exceeded the upper bound of this zone.

255. For the same reasons that we have decided not to recalibrate the sharing and low-end adjustment mechanisms because of alleged changes in the LECs' cost of capital at this time, we also decline to make a one-time adjustment to 1995-96 access rates based on a new determination of the LECs' overall cost of capital.[477]

256. Finally, we find that requiring LECs to calculate a separate rate adjustment for the PCIs of their common line, traffic sensitive, and trunking baskets would best approximate the PCIs that would be in effect now if we had excluded the 1984 data point from the Frentrup-Uretsky Study. Therefore, we do not adopt ICA's suggestion of using this one-time adjustment to reduce the transport residual interconnection charge or common line rates, or Sprint's suggestion of targeting this reduction to high and medium zone density transport rates.[478] Nevertheless, we agree with ICA that it might be in the public interest to reduce the residual interconnection charge so that it is not as high relative to other transport charges. Accordingly, in the further notice, we will consider exploring means of adapting the price cap plan to lower the transport residual interconnection charge.

V. OTHER BASELINE ISSUES

A. Common Line Formula

1. Background

257. In the LEC Price Cap Order, we adopted a formula to adjust the price cap index for the common line basket that is slightly different from the formula that we adopted to adjust the PCIs for the other three baskets.[479] This difference stems from the fact that, although the actual costs of common line are non-traffic sensitive, a portion of the cost is recovered through rates that are traffic sensitive.[480] Specifically, a portion of the common line costs is recovered by carrier common line charges that are assessed on interexchange carriers and other access

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[477] See Section IV.C.3. of this Order, supra.

[478] ICA Comments at 12-13; ICA Reply at 1-3; Sprint Reply at 4-8.

[479] LEC Price Cap Order, 5 FCC Rcd at 6787.

[480] Id. at 6793-95.

customers using switched, interstate access services based on minutes of use. The remaining portions of common line costs are recovered through flat rates charged to end-users.[481]

258. To provide incentives for greater productivity in the provision of common line service, the Commission devised a special formula for capping carrier common line rates, known as the "Balanced 50-50 formula." Reflecting the Commission's belief that both the LECs and the interexchange carriers could influence growth in common line usage, the Balanced 50-50 formula splits both the gains and losses in usage per line between LECs and their customers in order to provide incentives for both to stimulate demand.[482]

259. In the Notice, we requested comment on whether the Commission should reconsider its use of the Balanced 50-50 formula to cap common line charges. In the Notice, we noted that the LEC Price Cap Order had acknowledged the uncertainty of identifying the sources of carrier common line demand growth and predicting future sources of growth and their magnitude, and, consequently, had stated that, as we gained experience with the price cap plan, we might develop sufficient evidence to calculate a different split.[483] In the Notice, we solicited comment on what method the Commission should use to cap common line charges and whether adjustments to other parts of the plan would be warranted if the Commission adopted a per-line formula to cap common line charges. In requesting comment on this issue, we noted that in the LEC Price Cap Order the Commission stated that, because the Balanced 50-50 formula gives part of the benefit of demand growth to LECs, while the per-line formula does not, the Balanced 50-50 formula requires an X-factor that is about 0.5 percent higher than a per-line formula, in order to produce the same change in the PCI.[484]

2. Comments

260. USTA and some of the LECs assert that a common line formula adjustment to account for demand growth would not be necessary if the Commission adopts USTA's recommendation that the productivity factor be based on an analysis of long-term,

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[481] Id. at 6793-95.

[482] Id. at 6793-95.

[483] LEC Price Cap Order, 5 FCC Rcd at 6795 n.83.

[484] LEC Price Cap Order, 5 FCC Rcd at 6798.

industry-wide total factor productivity (TFP).[485] They claim that, because TFP already incorporates the effects on overall productivity of all productive inputs, a common line formula that includes an adjustment for demand growth (such as the Balanced 50-50 formula) effectively "double-counts" the productivity gains reflected in the measure of TFP.[486] USTA maintains that a per-line formula would double-count 100 percent of LEC output growth reflected in a TFP analysis, while a 50-50 formula would double count half of the LEC output growth.[487]

261. USTA asserts that, if the Commission decides not to adopt TFP as the basis for determining LEC productivity, then the Commission should retain the Balanced 50-50 formula.[488] USTA contends that the LECs stimulate interexchange usage through advertising, lower access rates, new technologies, equal access, and "call waiting and voice mail which facilitate call completion."[489] NYNEX claims that the Balanced 50-50 formula has produced significant downward pressure on carrier common line rates and should be retained.[490] USTA and GTE also argue that the fact that demand growth may have slowed under price cap regulation cannot necessarily be attributed to the LECs or to the operation of the common line formula.[491] They say that other factors -- including the downturn in the economy, increases in long-distance rates, and the growth of competitive alternatives -- are likely to have been responsible for the demand growth decrease.[492]

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[485] USTA Comments at 84-85; Lincoln Comments at 14; GTE Comments at 75-77; Bell Atlantic Comments at 18; BellSouth Comments at 52-54.

[486] BellSouth Comments at 52; USTA Comments at 84-85; Lincoln Comments at 14; GTE Comments at 75-77; Bell Atlantic Comments at 18.

[487] USTA Comments at 84-85.

[488] USTA Comments at 85 n.217.

[489] USTA Comments at 61-63; see also SWB Reply at 52 (LEC access charge reductions over the 1991-93 time period were an important factor in stimulating carrier common line demand).

[490] NYNEX Comments at 48. NYNEX also states that its average effective premium carrier common line rate has decreased approximately 11 percent annually. Id.

[491] USTA Comments at 61-63; GTE Reply at 33-35.

[492] Id.

262. AT&T, MCI, Sprint, and WilTel contend that the Balanced 50-50 formula should be eliminated because it understates the interexchange carriers' contribution to common line growth and overstates the LECs' contribution.[493] They state that the rate of growth in common line usage under the current formula has declined substantially from its levels prior to the adoption of incentive regulation and, therefore, the Balanced 50-50 formula has failed to achieve its objective of encouraging growth in common line usage.[494] MCI, Sprint, AT&T, and ICA recommend that the Commission adopt a per-line formula for capping common line rates.[495] MCI, Sprint, and ICA claim that a per-line formula will accurately reflect the role that the interexchange carriers play in stimulating demand growth.[496] AT&T asserts that a per-line formula for capping common line rates creates appropriate incentives for LECs to increase their productivity and reduce their costs because it automatically reduces per-minute common line charges as demand increases.[497] AT&T and Sprint maintain that, if the Commission adopts a per-line formula, the X-factor would have to be reduced by 0.8 percent.[498] MCI and SWB contend that the X-Factor would have to be reduced by 0.5 percent and 1.1 percent, respectively, if a per-line formula were adopted.[499]

263. SWB asserts that the Commission's rules mandating the recovery of end-user costs through carrier common line charges to interexchange carriers place the LECs at a competitive disadvantage in access markets and perpetuate uneconomic pricing

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[493] MCI Comments at 35; WilTel Comments at 26; AT&T Comments at 27-28; Sprint Comments at 15-17.

[494] Id.

[495] MCI Comments at 38-39; Sprint Comments at 15-17; AT&T Comments at 27-28; see also id. (the Commission should adopt a per-line formula for capping common line charges but only as an alternative to an end-user charge that fully reflects costs for non-traffic sensitive cost recovery); ICA Comments at 15.

[496] MCI Comments at 38-39; Sprint Comments at 15-17; ICA Comments at 15; see also WilTel Comments at 26.

[497] AT&T Comments at 27-28.

[498] AT&T Comments at 26 and Appendix B; Sprint Comments at 15; Sprint Reply at 14.

[499] MCI Comments at 23; SWB Reply at 53; see also BellSouth Reply at 28 (the productivity factor would have to be adjusted downward if a per-line formula were adopted).

levels.[500] SWB recommends that the LECs should be accorded the flexibility to increase the End User Common Line (EUCL) charges and reduce carrier common line rates.[501] Alternatively, SWB urges the Commission to develop a transitional plan permitting LECs the flexibility, over time, to increase EUCL charges.[502]

3. Analysis

264. There are two ways that LECs can improve their efficiency in providing common line service. They can seek to reduce their cost of service by lowering the cost per loop and they can attempt to increase the usage of the line, as measured by minutes of use. Since common line costs are non-traffic sensitive, increasing the usage per line reduces the amount of the fixed cost that must be recovered from each unit of traffic (minute of use). The issue is whether the LECs, the IXCs or both are responsible for increasing common line usage. If the LECs influence the usage levels, then the price cap rules should create an incentive for the LECs to promote greater usage of common lines. This could be accomplished by not adjusting the index for the CL basket each year to reflect increased or decreased usage. This approach (known as the "per-minute approach" because the per-minute charge is constant) would allow the LECs to keep the surplus or bear the burden of a revenue deficit.

265. Alternatively, if the IXCs are largely responsible for fostering growth in common line usage, the Commission's price cap rules should create an incentive for the IXCs to do so by passing through the reduction in average per-minute costs to the IXCs in the form of lower CCL rates. In that event, the price cap formula should cause the LECs' CCL rates to move downward to

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[500] SWB Comments at 47-48.

[501] SWB Comments at 47-48.

[502] SWB Comments at 47-48; SWB Reply at 49-51; see also Pac Bell Comments at 51-52 (the Commission should reduce or eliminate the carrier common line charge, and cap all end user common line charges at $6.00; competitive pressures from PCS, cable TV, and cellular loops will exert downward pressure on EUCL charges); NYNEX Comments at 49-50 (with the growth of competition, "the Commission should permit price reductions below the maximum level produced by the [carrier common line] formula by class of service and geographic area, and allow use of the revenues from these price reductions to either establish a flat-rated usage rate, or to increase other rates . . ."); id. (the rules should be changed "to provide for the use of historical, rather than forecasted, revenues in determining end user charges"); US West Reply at 32 (supporting NYNEX's recommendations).

reflect increases in common line usage. The per-line approach would force CCL rates down faster than either the per-minute or balanced 50-50 approach.

266. The current CL Formula is a compromise that attempts to create incentives for LECs to promote greater common line usage. It sets the PCI for the CL basket to reflect expected LEC performance in lowering loop costs and to share the benefits of the productivity gains associated with increased common line usage between LECs and their customers. The LECs clearly can influence their average cost per loop to some degree by lowering costs and, thus, should have an incentive to do so. However, it is not as clear to what degree LECs can influence subscriber usage. In the LEC Price Cap Order, we concluded that there was no determinative evidence in the record that established where future demand increases would originate -- from LEC or IXC efforts.[503] Thus, we were reluctant to adopt a plan that would discourage potential sources of increased productivity. Although we were hopeful that this review would show that both LEC and IXC efforts substantially affect demand growth, it appears that the record does not bear this out. The record does not support a finding that LECs have a significant effect on common line usage.

267. Although the LECs assert that their marketing efforts and high service quality contribute importantly to the growth in common line traffic, they provide little concrete evidence that these efforts in fact have a significant effect on the volumes of interstate calling per line. As the other commenters point out, this usage appears to be almost totally a function of the price, quality, and marketing of IXC services as well as general economic trends.

268. It also appears that an individual LEC has little ability to increase its traffic per common line by reducing its individual CCL rates. CCL rates are paid by IXCs that charge nationwide-averaged rates for the long distance services that use common lines, based on nationwide-averaged CCL rates. The effect is that, even if a LEC chose to set below-cap rates, end-user customers located in the LEC's service territory would see little effect on the nationwide-averaged interstate long-distance rates they pay. Accordingly, those customers would have correspondingly little incentive to increase their usage per common line. The LEC, in turn, would see little effect on its individual traffic.

269. The foregoing conclusions suggest that it is not necessary to create price cap incentives for LECs to increase growth in common line usage, because they have little influence over such growth. Instead, our analysis indicates that price cap

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[503] LEC Price Cap Order, 5 FCC Rcd at 6795.

CCL rates should be adjusted to reflect trends in common line usage in order to give IXCs an incentive to increase that usage. Accordingly, we decline to adopt the per-minute formula, which would reduce IXC incentives because it would permit the LECs to maintain a higher CCL rate. All changes in usage per line would affect LEC profits, but would not affect the CCL rate because the CCL formula would no longer include a factor to reflect changes in common line usage.[504]

270. We tentatively conclude that the per-line formula properly recognizes that loop costs are not traffic sensitive.[505] The per-line formula accomplishes this by including a factor that incorporates usage per common line into the calculation of the CCL rate. As the costs per loop are spread over increasing usage per line, the CCL rate would be reduced.[506]

271. Although we tentatively conclude that the per-line formula is superior to the per-minute and 50-50 formulas for the long term, we find it advisable to retain the balanced 50-50 approach for the 1995 annual access tariff filing. As discussed above, the Commission intends to issue a further notice of proposed rulemaking to determine whether and how the Commission should calculate a productivity factor based on TFP. As noted above, USTA and some of the LECs assert that, if the Commission decides to adopt a productivity factor based on TFP, an adjustment to the common line formula to account for demand growth would not be necessary. In light of the lack of consensus in the record on this issue and our intention to initiate a further rulemaking addressing a TFP-based productivity factor, we

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[504] There might be indirect effects, however, through the re-calculation of the overall X-Factor to include the growth in minutes per line in the X-Factor itself.

[505] The per-line formula is also the only formula that is consistent with the separations process of allocating a fixed percentage of loop costs to the interstate jurisdiction.

[506] AT&T would be required to pass through to customers of its Basket 1 services (basic domestic and international MTS) any reduction in the CCL rate. Thus, its customers would benefit from the per-line formula through lower rates and AT&T would benefit from the expected stimulation of demand caused by lower toll rates for Basket 1 services. AT&T would not be required to pass through any CCL reduction in rates for non-Basket 1 services. Similarly, AT&T's non-dominant competitors would not be required to lower any of their rates to reflect a decrease in CCL charges.

do not change the Balanced 50-50 formula in this proceeding.[507] Instead, we anticipate revisiting this issue in the further rulemaking. At that time, the Commission will be in a better position to evaluate not only whether and how to adopt a TFP-based productivity factor, but also how the adoption of such a productivity factor would affect issues involving the use of common line formula adjustment.[508]

272. Furthermore, because we are adopting only an interim plan at this time, and because we may decide to eliminate the common line formula in the long-term plan, we conclude that revising the plan at this plan would create excessive rate churn and confusion. We find that the potential public benefits of a per-line formula during the interim period are not sufficient to justify that rate churn.

273. In the LEC Price Cap Order, we developed our balanced 50-50 approach in conjunction with the X-Factor. Specifically, we first developed a "per-line X-Factor" assuming a per-line common line formula. Second, we calibrated a "50-50 X-Factor" that would produce the same carrier common line charges with the 50-50 X-Factor as would have been produced with a per-line formula and a per-line X-Factor. This calibration for the 50-50 X-Factor was based in part on estimated average minute of use growth. We based our demand estimates on historical demand from 1984 to 1991, adjusted to remove the demand stimulation resulting from the Subscriber Line Charge and other exogenous cost adjustments. We think it likely that demand growth in the interim period will be approximately equal to the demand levels used to calibrate the 50-50 X-Factor. Therefore, we conclude that there will be little if any harm to the interests of either LECs or access customers from retaining the 50-50 formula during the interim period.

B. Exogenous Cost Adjustments

1. Background

274. In the LEC Price Cap Order, the Commission determined that certain costs incurred by LECs caused by administrative,

[507] In addition, converting from the current formula to the per-line formula for the 1995 filing would require LECs to recalculate all of their historic CL indexes in order to restate their current indexes.

[508] In any event, SWB's claim that the Commission should modify its rules governing the recovery of EUCL charges raises issues that are beyond the scope of this proceeding.

legislative or judicial requirements beyond the control of the carriers should result in an adjustment to the PCI to ensure that the price cap formula does not lead to unreasonably high or unreasonably low rates.[509] The Commission found that a decision not to recognize these costs in the PCI would either unjustly punish or unjustly reward the carrier by incorrectly treating them as changes in the carrier's level of efficiency.[510] The Commission called these costs "exogenous" or "Z Factor" costs. Exogenous costs specified in our rules include cost changes occasioned by: (1) completing the amortization of depreciation reserve deficiencies; (2) amendments to the Uniform System of Accounts; (3) changes in the Separations Manual; (4) reallocation of regulated investment to nonregulated activities; (5) changes in transitional and long term support; and (6) inside wire amortizations.[511] Exogenous treatment was explicitly rejected for other categories, including depreciation rate changes and equal access costs.[512] The rules also provide for exogenous treatment of other extraordinary cost changes to the extent we may permit or require.[513]

275. The Commission has also determined that not all changes beyond the carrier's control are to be given exogenous treatment. For example, the Commission held that, although tax law changes are outside the carrier's control, general tax law changes are reflected in the GNP-PI component of the price cap formula and, therefore, exogenous treatment of such changes would unfairly "double count" their impact. Accordingly, the Commission decided that only those tax changes that "uniquely or disproportionately" affect the LECs would be eligible for

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[509] LEC Price Cap Order, 5 FCC Rcd at 6807.

[510] Id.

[511] See Section 61.45(d) of the Commission's Rules, 47 C.F.R. § 61.45(d).

[512] LEC Price Cap Order, 5 FCC Rcd at 6806-09.

[513] For example, the Commission has allowed the LECs to treat as exogenous the reasonable costs they incurred specifically for the implementation and operation of the basic 800 data base service required by Commission orders. Provision of Access for 800 Service, CC Docket No. 86-10, 8 FCC Rcd 907, 911 (1993). The Commission reasoned that because it effectively required the implementation of this service and dictated the terms, conditions, and schedule for offering it, the reasonable costs specific to implementing basic 800 data base service are outside the carrier's control and, therefore, may be treated exogenously.

exogenous treatment.[514] Similarly, although changes in generally accepted accounting principles (GAAP) are outside the carrier's control, the Commission stated that "[i]f a GAAP change is universal enough to be reflected in the inflation measure, exogenous cost treatment would result in double counting within the context of the PCI."[515] Therefore, we decided to accord exogenous treatment to GAAP changes that have been adopted by the Financial Accounting Standards Board (FASB) and have become effective (and, thus, outside the carrier's control), and that have been shown not to involve double counting with the GNP-PI adjustment.[516]

276. To date, the most significant requests for higher exogenous costs concern changes in GAAP accounting for post-employment benefits, such as severance pay and other benefits for separated workers,[517] and employee post-retirement liabilities other than pensions, such as retirees' life insurance and medical and dental care benefits (commonly known as "other post-retirement employee benefits" or "OPEBs").[518] In December 1990, the FASB adopted SFAS-106, which requires companies to account for other post-retirement benefits on an accrual basis beginning December 15, 1992.[519] Prior to that time, companies had accounted for OPEBs on a cash payment basis. Under accrual methods, OPEBs are treated as deferred compensation that is earned by employees as they work. In addition to requiring accrual treatment for ongoing OPEBs, SFAS-106 requires companies to book the previously unaccrued OPEB amount for retirees and active employees as of the date that the company adopts SFAS-106. This amount is known as the transitional benefit obligation

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514 LEC Price Cap Order, 5 FCC Rcd at 6808.

515 LEC Price Cap Reconsideration Order, 6 FCC Rcd at 2665.

516 LEC Price Cap Order, 5 FCC Rcd at 6808; LEC Price Cap Reconsideration Order, 6 FCC Rcd at 2665.

517 See RAO Letter 22, 8 FCC Rcd 4111 (Com. Car. Bur., Accounting and Audits Div. 1993).

518 Treating OPEB cost changes exogenously results in a permanent price cap increase of approximately $200 million.

519 See Southwestern Bell Corporation, GTE Service Corporation, Notification of Intent to Adopt Statement of Financial Accounting Standards No. 106, Employers Accounting for Post-retirement Benefits Other Than Pensions, 6 FCC Rcd 7560 (Com. Car. Bur. 1991) (SFAS-106 Order).

(TBO).[520]

277. In November 1992, FASB adopted Statement of Financial Accounting Standards-112 (SFAS-112), which requires carriers to account for such post-employment benefits on an accrual basis beginning December 15, 1993.[521] Prior to that time, most companies recognized these costs only when payments were actually made. The Common Carrier Bureau required LECs to adopt SFAS-112 for regulatory accounting purposes no later than January 1, 1994.[522] Bell Atlantic has sought exogenous treatment of its SFAS-112 costs.[523]

278. On application of SWB and GTE, the Common Carrier Bureau found the SFAS-106 GAAP change consistent with Commission objectives and authorized the LECs to adopt it on or before January 1, 1993.[524] The Bureau also directed carriers to use the SFAS-106 option of spreading TBO amounts over prescribed periods of time, in order to avoid the distortion of LEC operating results from a one-time inclusion of the TBO amounts.[525]

279. In 1992, several LECs filed tariff revisions that increased their PCI levels and their rates to reflect the change caused by SFAS-106, asserting that these increments were exogenous costs. The Common Carrier Bureau suspended and investigated these tariff filings.[526] In the ensuing OPEBs

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[520] See 1993 Annual Access Tariff Filings, CC Docket No. 93-193, 8 FCC Rcd 4960, 4961 (Com. Car. Bur. 1993) (1993 Access Order).

[521] See RAO Letter 22, 8 FCC Rcd at 4111.

[522] Id.

[523] Bell Atlantic, F.C.C. Tariff No. 1, Transmittal No. 704, CC Docket No. 94-139, DA 95-193, para. 3 (Com.Car.Bur. released February 9, 1995).

[524] SFAS-106 Order, 6 FCC Rcd at 7560.

[525] Id. Under this option, LECs could either spread the TBO over a twenty-year period, or over the average remaining service period of active plan participants.

[526] Treatment of Local Exchange Carrier Tariffs Implementing Statement of Financial Accounting Standards, "Employers Accounting for Post-retirement Benefits Other Than Pensions," 7 FCC Rcd 2724 (Com. Car. Bur. 1992).

Order,[527] the Commission denied the LECs' claims for exogenous cost treatment. The Commission denied exogenous cost treatment for ongoing expenses on the grounds that, although the accounting change was not within the carriers' control, the LECs had substantial control over the present and future benefit plans they set with their employees and the costs of these plans and, therefore the LECs had considerable control "over the level and timing of OPEB expenses."[528] With respect to the transitional obligation, the Commission held inter alia that the LECs had failed to demonstrate that the effects of SFAS-106 were not already reflected in the GNP-PI,[529] but said that it might consider treating OPEB TBO costs exogenously based on a better and more complete record.[530] A number of LECs argued for exogenous treatment of TBO costs in their 1993 annual access filings. The Common Carrier Bureau suspended those tariffs for one day and initiated an investigation of, among other things, whether the LECs had met their burden of showing that implementing SFAS-106 resulted in an exogenous cost change.[531]

280. On the LECs' appeal of the OPEBs Order, the United States Court of Appeals for the District of Columbia Circuit found that the Commission "arbitrarily and capriciously disregarded its own rule" in denying exogenous cost treatment for the LECs' cost changes wrought by SFAS-106.[532] With respect to the Commission's decision denying exogenous cost treatment for ongoing OPEB expenses, the court held that the "control test," as established by the Commission, for purposes of GAAP accounting changes is "satisfied simply by the fact of exogenous imposition of the accounting rule, without concern for the underlying costs covered by the rule. . . ."[533] The court therefore held that the

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[527] Treatment of Local Exchange Carrier Tariffs Implementing Statement of Financial Accounting Standards, "Employers Accounting for Post-retirement Benefits Other than Pensions", CC Docket No. 92-101, 8 FCC Rcd 1024 (1993) (OPEBs Order), remanded sub nom., Southwestern Bell Tel. Co. v. FCC, 28 F.3d 165 (D.C. Cir. 1994) (Southwestern Bell).

[528] OPEBs Order, 8 FCC Rcd at 1033.

[529] Id. at 1034-35.

[530] Id. at 1037.

[531] 1993 Access Order, 8 FCC Rcd at 4961-63.

[532] Southwestern Bell, 28 F.3d 165.

[533] Id. at 170; see also id. (the court determined that, under the Commission's rules, "an FASB change adopted by the Commission is not a change under control of the carrier, and,

Commission's decision to deny exogenous cost treatment for the ongoing OPEBs cost changes based on the LECs' control over the underlying costs of the benefit plans was without foundation in the price cap rules.

281. With respect to the Commission's decision denying exogenous cost treatment for TBOs, the court found that the Commission invoked criteria not found in the exogenous cost rules and imposed "impossible burdens" as to GNP-PI double counting. In so holding, the court remanded to the Commission to consider the LECs' request for exogenous cost treatment of their SFAS-106 incremental costs in a manner consistent with the court's opinion and the Commission's own rules. After the court's remand, a number of carriers sought exogenous treatment for OPEB costs that they had not included in their 1993 annual access rates.[534]

282. In the Notice, we requested comment on whether the number of cost changes currently eligible for exogenous treatment under price caps should be reduced.[535] Specifically, we asked whether we should narrow the exogenous cost treatment of GAAP and USOA changes by limiting exogenous treatment to economic cost changes. We noted that GAAP changes of the type required by SFAS-106 may represent only a change in how books are kept and costs are recorded, not an economic cost change that might be expected to affect prices in competitive markets. We also noted that LECs, because they generally initiate exogenous cost change requests, have substantial incentives to report and request exogenous treatment only for those changes that might generate increases in the cap, not those that might justify cap decreases. In that regard, we asked whether only cost changes that solely affect telephone companies or similar companies such as utilities should be eligible for exogenous cost treatment, and whether price cap LECs should be required to recognize all such changes consistently and to report such changes as part of their required tariff filings. In addition, we solicited comment on whether we should adopt an administrative process to allow access customers or other groups to request exogenous treatment for cost changes.[536]

2. Comments

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once mandated by the Commission, the change satisfies the control criterion").

[534] See, e.g., Bell Atlantic Telephone Companies, et al., Memorandum Opinion and Order, CC Docket No. 94-157, DA 94-1613 (Com.Car.Bur., released Dec. 29, 1994).

[535] Notice, 9 FCC Rcd at 1699.

[536] Id.